

March 6, 2008

**MEMORANDUM TO:** David M. Spooner  
Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Fourth Administrative Review of the Antidumping Duty Order on  
Carbon and Certain Alloy Steel Wire Rod from Mexico (2005-  
2006)

**Summary:**

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions described in the Discussion of Interested Party Comments section of this memorandum.

Below is the complete list of the issues in this review for which we have received comments from the parties:

I. List of Comments

**Hylsa Puebla S.A. (“Hylsa”)**

- Comment 1: Treatment of Sales with Negative Dumping Margins (“Zeroing”)
- Comment 2: Calculation of Home-Market Credit Expenses
- Comment 3: Treatment of Dollar-Denominated Home Market Sales

## II. Background

On November 7, 2007, the Department of Commerce (“the Department”) published the preliminary results of its fourth administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico. See Preliminary Results of Antidumping Duty Administrative Review: Carbon and Alloy Steel Wire Rod from Mexico, 72 FR 62820 (November 7, 2007) (“Preliminary Results”). The merchandise covered by this review is described in the Federal Register notice issued the same date as this memorandum. The review covers one manufacturer/exporter: Hylsa. The period of review (“POR”) is October 1, 2005, through September 30, 2006. We received case and rebuttal briefs from petitioners<sup>1</sup> and Hylsa. No party requested a hearing.

## III. Discussion of Interested Party Comments

### **Comment 1: Treatment of Sales with Negative Dumping Margins (“Zeroing”)**

Hylsa argues that the Department should not treat negative dumping margins found on Hylsa’s sales during the POR as zero margins. According to Hylsa, this methodology is inconsistent with the “fair comparison” requirement of the World Trade Organization (“WTO”) Antidumping Agreement as determined in a number of decisions by the WTO’s Appellate Body. See Hylsa’s case brief at page 2. Specifically, Hylsa contends the Appellate Body of the WTO has recently found that the use of zeroing in administrative reviews is inconsistent with the Antidumping Agreement’s provisions related to duty assessment. According to Hylsa, the United States has officially declared its intention to implement the Appellate Body’s ruling regarding “zeroing” by December 24, 2007. See United States - Laws, Regulations, and Methodology for Calculating Dumping Margins (“US-Zeroing” (2006)), Report of the Appellate Body, WT/DS294/AB/R (18 April 2006) (adopted May 9, 2006), at para 135). Therefore, Hylsa urges the Department to eliminate its practice of “zeroing” for these final results.

Petitioners argue that the Department should abide by its longstanding practice of denying the offset for negative dumping margins. Citing to 19 U.S.C. 3533(g), they point out that the “Department’s responsibility is to interpret the U.S. antidumping statute, rather than . . . interpret and apply the WTO agreements or decisions of its dispute settlements bodies,” as it is argued by Hylsa.

Further, petitioners note that the Department recently considered the argument regarding eliminating “zeroing” in other antidumping administrative reviews and determined that the Appellate Body’s Decisions have no bearing on whether the Department’s zeroing practice is consistent with U.S. law. See, e.g., Brake Rotors from the People’s Republic of China: Final

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<sup>1</sup> The petitioners are Mittal Steel USA Inc., Gerdau USA Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries Inc., and Rocky Mountain Steel Mills (collectively “petitioners”).

Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review, 72 FR 42386 (August 2, 2007), and accompanying Issues and Decision Memorandum at Comment 7. Therefore, petitioners conclude that the Department should not adjust its calculations for these final results.

In addition, citing to the U.S. Court of International Trade decision in NMB Singapore Ltd. v. United States case, petitioners assert that the Department is not required to apply any changes regarding its zeroing policy retroactively to administrative reviews. See NMB Singapore Ltd. v. United States, Ct. No. 06-00182, Slip 07-175 at 12-16 (November 30, 2007).

### The Department's Position

We agree with petitioners and have not changed our calculation of the respondent's weighted-average dumping margin for these final results.

Section 771(35)(A) of the Tariff Act of 1930, as amended ("the Act"), defines "dumping margin" as the "amount by which the normal value exceeds the export price and constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than the export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than the export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute. See Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir.) cert. denied sub. nom. ("Timken"). See also Koyko Seiko Co. v. United States, 543 U.S. 976 (2004). See also Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) ("Corus Staal").

The Department notes that it has taken action with respect to two WTO dispute settlement reports finding the denial of offsets to be inconsistent with the Antidumping Agreement. Regarding U.S. - Softwood Lumber (see United States - Final Dumping Determination on Softwood Lumber from Canada, Appellate Body Report, WT/DS264/AB/R (August 11, 2004) (adopted August 31, 2004)), consistent with section 129 of the Uruguay Round Agreements Act, the United States' implementation of that WTO report affected only the specific administrative determination that was the subject of the WTO dispute: the antidumping duty investigation of softwood lumber from Canada. See 19 U.S.C. 3538.

The Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR at 77722 (December 27, 2006). In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. Id. at 77724. With respect to the specific administrative reviews at issue in that dispute, the United States determined that each of those

reviews had been superseded by a subsequent administrative review and the challenged reviews were no longer in effect.

As such, the Appellate Body's reports in U.S. - Softwood Lumber and U.S. Zeroing (2006) have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. See Corus Staal, 395 F.3d at 1347-49; Timken, 354 F.3d at 1342. Accordingly, the Department will continue in this case to deny dumping offsets based on export transactions that exceed normal value.

Further, Congress had adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. See 19 U.S.C. 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary); see also the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1 (1994) at 354 ("{a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is 'not inconsistent' with the panel or Appellate Body recommendations)." Because no change has yet been made with respect to the policy of "zeroing" in administrative reviews, the Department has continued with its current approach to calculating and assessing antidumping duties in this administrative review. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 72 FR 28676, 28678 (May 22, 2007), and accompanying Issues and Decision Memorandum at Comment 4. See also Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy, 72 FR 65939 (November 26, 2007), and accompanying Issues and Decision Memorandum at Comment 2. See also Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

For the foregoing reasons, we have not changed the methodology employed in calculating Hylsa's weighted-average margin for these final results.

## **Comment 2: Calculation of Home-Market Credit Expenses**

According to petitioners, the Department erred in its decision to include home-market value added tax ("VAT") in the price used as the basis for the calculation of home-market credit expenses. According to petitioners, the Department's long-standing practice is to exclude VAT from the home market credit expense calculation "because VAT is not a revenue for Hylsa but for the government." See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico, 71 FR 27989 (May 15, 2006), and accompanying Issues and Decision Memorandum at Comment 9. Therefore, petitioners claim that it is appropriate for the Department to recalculate Hylsa's credit expenses to reflect a VAT-exclusive price for the final results.

Hylsa argues that the Department correctly calculated Hylsa's home-market credit expenses based on a VAT-inclusive price. Hylsa acknowledges that the Department's longstanding practice is to determine credit expenses on VAT-exclusive prices. However, Hylsa asserts that the Department's past decisions are "economically and legally misguided." See Hylsa's rebuttal case brief at 4. Hylsa explains that the purpose of calculating credit expenses is to determine the economic cost to the seller when it decides to allow the customer to delay its payment and that the Department has recognized this in its past decisions. See Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico, 56 FR 1794, 1798 (January 17, 1991). Hylsa argues that the Department should calculate credit expenses based on the total price actually paid by the customer, the invoice amount, because the cost to Hylsa of the delayed payment must be measured by the total amount on which payment was delayed, which includes the tax-exclusive price, plus VAT. Thus, Hylsa asserts that the Department should continue using the credit expenses for home-market sales as reported by Hylsa, based on the total amount due from the customer on each transaction.

#### The Department's Position

We have re-examined the record and agree with petitioners' claim that VAT should be excluded in the home market credit expense calculation because VAT is not a revenue for Hylsa but for the government. It is the Department's longstanding practice to calculate imputed credit based on the price net of taxes, freight, and insurance. See, e.g., Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review, 63 FR 12744, 12747-48 (March 16, 1998); Notice of Final Determination of Sales at Less than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38772-73 (July 19, 1999).

Further, as the Department explained in Certain Cut-to Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 18486, 18488 (April 15, 1997), it is not our practice to include VAT payments in credit expense calculations. In that case we stated that "... while there may be a potential opportunity cost associated with the respondents' prepayment of the VAT, this fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons." *Id.* The Department continued to explain that "to allow the type of credit adjustment suggested by the respondents would imply that in the future the Department would be faced with the virtually impossible task of trying to determine the potential opportunity cost or gain of every charge and expense reported in the respondents' home market and U.S. databases." *Id.* Furthermore, no statute or regulation requires the Department to include VAT in the home-market credit expense calculation. See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 33041, 33050 (June 17, 1998). As the SAA explains at page 827, "... the deduction from normal value for indirect taxes constitutes a change from the existing statute. The change is intended to ensure that dumping margins will be tax-neutral."

Therefore, for these final results, we are following our established practice of excluding VAT from home-market credit expense calculations. We have made the appropriate modifications to the program to correct this error.

**Comment 3: Treatment of Dollar-Denominated Home Market Sales**

Petitioners note that in the preliminary results, the Department incorrectly converted U.S. dollar-denominated home market sales to Mexican pesos based on the home market date of sale, and then converted those values back to U.S. dollars based on the U.S. sale date. Petitioners argue that the Department's use of multiple exchange rates distorts the Department's calculation and should be corrected for the final results.

According to petitioners, the Department's normal practice is to consider the sales prices in the currencies in which they were incurred. See the Department's December 7, 2006, questionnaire at page G-6. For these final results, petitioners argue the Department should weight average the U.S. dollar home market prices without any conversions and then "combine the U.S. dollar prices with converted peso prices at the 'FUPDOL' stage of the calculations." See petitioners' case brief at 1, dated December 7, 2007. Accordingly, petitioners urge the Department to correct this error for these final results.

Hylsa disagrees with petitioners and claims that the treatment of dollar-denominated home market sales is proper. Hylsa argues that petitioners misunderstood the basic rule for conversion of currencies in the price comparisons. According to Hylsa, there is no basis for the Department to re-calculate Hylsa's dollar-denominated sales in the home market because the margin program "brought over the home market prices and adjustments in the currency in which they were incurred and then converted the final net price to dollars using the same exchange rate." See Hylsa's rebuttal brief at 1, dated December 12, 2007. Therefore, Hylsa states that the Department should continue to use its calculation of home market dollar denominated sales for the final results.

**The Department's Position**

We have examined the record and we disagree with petitioners that the Department incorrectly converted Hylsa's dollar-denominated home market sales into peso-denominated sales. The methodology applied in the Preliminary Results is appropriate and consistent with 19 CFR 351.415(a) and the Department's long-standing practice.

In this administrative review, we determined whether Hylsa sold subject merchandise in the home market during the POR at prices that were below its cost of production. In conducting the cost test, we noted that a portion of Hylsa's home market sales was denominated in U.S. dollars. As a result, in conducting the cost test, we converted all of Hylsa's U.S. dollar-denominated home market sales into pesos using the rate of exchange on the date of the home market sale. Separate from this analysis, we performed the antidumping margin calculation. As part of the

calculation, we compared the price of Hylsa's sales of subject merchandise in the home market to the dollar-denominated price of Hylsa's sales of subject merchandise in the United States. A portion of Hylsa's home market sales was denominated in pesos. Therefore, in our margin calculations, we converted the peso-denominated home market prices and adjustments, as originally reported by Hylsa, into U.S. dollars using the exchange rate on the date of the U.S. sale. As explained above, a portion of Hylsa's home market sales was denominated in U.S. dollars; however, because we used as our starting point home market sales data, as originally reported by Hylsa, no currency conversion was required with respect to the home market sales that were denominated in U.S. dollars. Therefore, contrary to petitioners' claims, in conducting the margin calculation, we did not conduct multiple exchange rate conversions with respect to Hylsa's U.S. dollar-denominated home market sales and, thus, did not introduce a distortion into our analysis.

### Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results and the final weighted-average dumping margins in the Federal Register.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date